

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES DAVID GORDON,
Petitioner,
v.
JOE A. LIZARRAGA,
Respondent.

Case No. 12-cv-00769-PJH

ORDER VACATING STAY AND VACATING MOTION HEARING

Re: Dkt. No. 9

In light of petitioner's notice of the California Supreme Court's ruling on his state petition for writ of habeas corpus, the stay entered by order dated March 28, 2012 is hereby lifted and VACATED.

Petitioner has filed a motion for leave to amend the habeas petition and to file the proposed first amended petition. The rule governing pleading amendments, Federal Rule of Civil Procedure 15, made applicable to habeas proceedings by 28 U.S.C. § 2242, Federal Rule of Civil Procedure 81(a)(2), and Habeas Corpus Rule 11, allows amendments with leave of court any time during a proceeding. *Mayle v. Felix*, 545 U.S. 644, 654-55 (2005) (citing Fed. R. Civ. P. 15(a)). Before a responsive pleading is served, pleadings may be amended once as a matter of course, i.e., without seeking court leave. *Id.* at 655. The docket reflects that no order to show cause was issued and the initial habeas petition was not served on respondent. Petitioner may, therefore, file the amended petition without leave of court and withdraw the motion for leave to amend. See *Sechrest v. Ignacio*, 549 F.3d 789, 804 (9th Cir. 2008) (amendment of a petition generally constitutes waiver of any omitted arguments or claims from previous versions of

1 the petition). If, however, petitioner for some reason would prefer to seek leave of court
2 to file an amended petition, he shall file an amended notice of motion attaching a
3 certificate of service indicating that respondent has been served with the motion.

4 The motion hearing noticed for February 3, 2016 is hereby VACATED. If petitioner
5 prefers to file a motion for leave to amend rather than simply filing the amended petition
6 and withdrawing the previously filed motion, he may re-notice the motion for the same
7 date.

8 **IT IS SO ORDERED.**

9 Dated: December 10, 2015



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11 PHYLLIS J. HAMILTON
United States District Judge